

payable for any temporary or permanent, partial or total disability, except that the director, in proper cases, may allow additional compensation during the actual healing period, following amputation.

The Appeals Board acknowledges the language of K.S.A. 1997 Supp. 44-510d(b) is somewhat misleading in that it seems to indicate, when an injury is a scheduled injury under K.S.A. 1997 Supp. 44-510d, temporary total disability compensation is not allowable under any circumstance. That is not the case.

K.S.A. 44-510c deals specifically with a party's entitlement to temporary total disability compensation. The language of K.S.A. 44-510c(c) states:

When any permanent total disability or temporary total disability is followed by partial disability, compensation shall be paid as provided in K.S.A. 44-510d and 44-510e and amendments thereto.

It is clear the legislature contemplated an entitlement to temporary total disability compensation followed by compensation under the scheduled injury statute, K.S.A. 1997 Supp. 44-510d.

The Kansas Court of Appeals, in Carter v. Koch Engineering, 12 Kan. App. 2d 74, 735 P.2d 247, *rev. denied* 241 Kan. 838 (1987), dealt with K.S.A. 1997 Supp. 44-510d(b) in deciding how the healing period was to be applied on a scheduled injury. In the computations in Carter, the Court of Appeals discussed claimant's entitlement to 51.71 weeks temporary total disability compensation, followed by a computation of the permanent award under K.S.A. 44-510d. It is clear from Carter, that payment of temporary total disability compensation is proper in a scheduled injury award under K.S.A. 1997 Supp. 44-510d.

However, the Appeals Board must consider its jurisdiction over this issue. Appeals to the Board from preliminary hearing orders are legislatively controlled by K.S.A. 1997 Supp. 44-551 and K.S.A. 1997 Supp. 44-534a. K.S.A. 1997 Supp. 44-551 precludes the Board from taking jurisdiction over preliminary hearing awards, when these matters are appealed, absent an allegation that the administrative law judge exceeded the administrative law judge's jurisdiction in granting or denying the relief requested. K.S.A. 1997 Supp. 44-534a provides specific disputed issues which are considered jurisdictional and which include whether the employee suffered an accidental injury, whether the accidental injury arose out of and in the course of the employee's employment, whether notice was given or claim timely made, or whether certain defenses apply. The dispute raised by claimant in this matter does not fall within the issues set forth in K.S.A. 1997 Supp. 44-534a, so the Appeals Board must consider whether the Administrative Law Judge exceeded his jurisdiction under K.S.A. 1997 Supp. 44-551 before jurisdiction can be taken.

The Administrative Law Judge's decision is based upon an interpretation of a statute and how it can be applied to the Workers Compensation Act in general. This claimant's entitlement to temporary total disability compensation and the facts relating to that entitlement are irrelevant to this question. The evidence in this case is of no consequence. The question presented is whether the basic premise upon which the Administrative Law Judge made his findings was erroneous. In this instance, the Appeals Board finds the Administrative Law Judge's interpretation of K.S.A. 1997 Supp. 44-510d(b) was erroneous and in conflict with the legislative intent shown in K.S.A. 44-510c(c). Therefore, this matter will be remanded to the Administrative Law Judge for a determination of the claimant's entitlement to temporary total disability compensation, and the Administrative Law Judge's application of K.S.A. 1997 Supp. 44-510d(b) is reversed.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Order of Administrative Law Judge Jon L. Frobish dated December 11, 1998, should be, and is hereby, reversed, and the matter is remanded back to the Administrative Law Judge for consideration of claimant's request for temporary total disability compensation.

IT IS SO ORDERED.

Dated this ____ day of January 1999.

BOARD MEMBER

c: Roger A. Riedmiller, Wichita, KS
William L. Townsley, III, Wichita, KS
Jon L. Frobish, Administrative Law Judge
Philip S. Harness, Director